

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ISRAEL CORONADO §
VS. § CIVIL ACTION NO.
THE CITY OF MERCEDES, HENRY §
HINOJOSA, and DAGOBERTO CHAVEZ, JR. § M – 20 – 169

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR PARTIAL DISMISSAL
OF PLAINTIFF'S COMPLAINT**

Defendants **CITY OF MERCEDES, TEXAS, HENRY HINOJOSA** and **DAGOBERTO CHAVEZ, JR.** submit this Reply to Plaintiff's Response to Defendants' Motion for Partial Dismissal of Plaintiff's Complaint.

1.01 Plaintiff alleged violations of his First Amendment rights to freedom of speech and to petition and his Fourteenth Amendment rights to substantive and procedural due process, along with claims of wrongful arrest and conspiracy, for which he sought compensatory and punitive damages, attorney's and expert witness fees, litigation expenses and costs. Defendants only sought to dismiss the claims for due process, conspiracy, punitive damages against the City and litigation expenses at this time. Plaintiff identified no support to avoid dismissal of those claims.

1.02 If Coronado was arrested in violation of the Fourth Amendment, or actions were taken because of his speech or right to petition in violation of the First Amendment,

those amendments will provide the analysis for evaluating those claims. *Albright v. Oliver*, 510 U.S. 266, 273, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994). In addition, Coronado cannot establish a Fourteenth Amendment deprivation of substantive or procedural due process without first identifying a property interest of which he was deprived. *Blackwell v. Laque*, 275 Fed. App'x 363, 368 (5th Cir. 2008). Because he has not identified a property interest or authority to pursue a First or Fourth Amendment violation through the Fourteenth Amendment, his Fourteenth Amendment claims must be dismissed.

1.03 Because Plaintiff's Complaint made general references to "conspiracy," Defendants also moved to dismiss that claim to the extent it was being pursued. *See* Dkt No. 1, Plntf's Cmplt, ¶¶ 24 & 43. Coronado has clarified, however, that he has not asserted such a claim. Dkt No. 9, Plntf Israel Coronado's Rsp to Dfts' Mtn to Dismiss, p. 9 n.1. Defendants' motion to dismiss Plaintiff's conspiracy claim would therefore appear to be moot.

1.04 Coronado also seeks to pursue a claim for exemplary damages. Though he may pursue that claim against the individual Defendants, such a claim against the City is barred. *Cook County v. United States ex rel. Chandler*, 538 U.S. 119, 129, 123 S. Ct. 1239, 1246, 155 L. Ed. 2d 247, 257 (2003). Coronado's exemplary damages claim against the City of Mercedes must also be dismissed.

1.05 Although Coronado sought recovery of "litigation expenses and expert fees" he identified no authority to support for his request for such fees or expenses, rather than attorney's fees, pursuant to 42 U.S.C. § 1988, and he is not pursuing an ADA claim pursuant to 42 U.S.C. § 12205. His claim for recovery of "litigation expenses and expert fees" must therefore be dismissed as well.

WHEREFORE, PREMISES CONSIDERED, Defendants **CITY OF MERCEDES, TEXAS, HENRY HINOJOSA** and **DAGOBERTO CHAVEZ, JR.** would respectfully request that Plaintiff's Fourteenth Amendment claims, conspiracy claims, claims for recovery of expert fees and litigation expenses, and his exemplary damages claims against the City be dismissed for failure to state a claim upon which relief can be granted, and that Defendants be granted such other and further relief to which they may show themselves to be justly entitled, whether general or special, at law and in equity.

Respectfully submitted,

/s/ J. Arnold Aguilar

J. Arnold Aguilar
Attorney-in-Charge
State Bar No. 00936270
Federal Adm. No. 6822
email: arnold@aguilarzabartellc.com

AGUILAR★ZABARTE, LLC
Of Counsel
990 Marine Drive
Brownsville, Texas 78520
(956) 504-1100
(956) 504-1408 (fax)

Attorneys for Defendants
CITY OF MERCEDES, TEXAS,
HENRY HINOJOSA and
DAGOBERTO CHAVEZ, JR.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL DISMISSAL OF PLAINTIFF'S COMPLAINT** will on this the 7th day of August, 2020, be automatically accomplished through the Notice of Electronic Filing upon the following:

Omar Ochoa
oochoa@omarochoalaw.com
OMAR OCHOA LAW FIRM PC
121 N. 10th St.
McAllen, Texas 78501

/s/ J. Arnold Aguilar
J. Arnold Aguilar